

1 UNITED STATES DISTRICT COURT

2 NORTHERN DISTRICT OF NEW YORK

3

4 NATIONAL RIFLE ASSOCIATION OF AMERICA, )  
5 )  
6 Plaintiff, ) CASE NO. 18-CV-566  
7 )  
8 vs. )  
9 ANDREW CUOMO, et al., )  
10 )  
11 Defendants. )  
12 )

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13 **TRANSCRIPT OF PROCEEDINGS**  
14 **BEFORE THE HON. CHRISTIAN F. HUMMEL**  
15 **MONDAY, APRIL 26, 2021**  
16 **ALBANY, NEW YORK**

17 **FOR THE PLAINTIFF:**

18 BREWER ATTORNEYS & COUNSELORS  
19 By: MORDECHAI GEISLER, ESQ. and MICHELLE MARTIN, ESQ.  
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22 **FOR THE DEFENDANTS:**

23 OFFICE OF THE ATTORNEY GENERAL  
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26 **FOR DEFENDANT MARIA T. VULLO:**

27 EMERY, CELLI, BRINCKERHOFF, ABADY, WARD & MAAZEL LLP  
28 By: DEBRA L. GREENBERGER, ESQ. and  
29 ANDREW G. CELLI, JR., ESQ.  
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**NRA of America v. Cuomo et al. - 18-CV-566**

1 (Videoconference.)

2 THE CLERK: Today is Monday, April 26, 2021. It's  
3 11:01 a.m. The case is National Rifle Association of America  
4 versus Cuomo et al., docket No. 18-CV-566. Appearances for the  
5 record, please.

6 MR. GEISLER: For the plaintiff National Rifle  
7 Association of America, Mordechai Geisler, Brewer Counselors and  
8 associates -- attorneys. Excuse me.

9 MS. MARTIN: Good morning. Michelle Martin for the  
10 National Rifle Association from Brewer Attorneys & Counselors.

11 MR. SCOTT: William Scott, New York State Office of  
12 the Attorney General for defendant Cuomo.

13 MS. GREENBERGER: Good morning, Your Honor. Debby  
14 Greenberger from Emery, Celli, Brinckerhoff, Abady, Ward &  
15 Maazel for defendant Maria Vullo.

16 MR. CELLI: Your Honor, Andrew Celli. I'm also here  
17 with Ms. Greenberger for defendant Vullo. Ms. Greenberger will  
18 be handling the hearing today.

19 THE COURT: Good morning, all counsel. I scheduled  
20 this hearing this morning to address a motion to compel  
21 plaintiffs to provide further interrogatory responses, which  
22 appears at docket No. 293, which was filed back on October 5 of  
23 2020. It's my intention to listen to arguments of counsel this  
24 morning and provide a ruling with respect to each of the  
25 specific objections from the bench this morning, and then to ask

**JACQUELINE STROFFOLINO, RPR**  
**UNITED STATES DISTRICT COURT - NDNY**

**NRA of America v. Cuomo et al. - 18-CV-566**

1 my court reporter, Ms. Stroffolino, to prepare the transcript,  
2 which she will annex to an order which I will do. What I'm  
3 going to do is I'm going to place on the record what has  
4 transpired before today's date to give this morning's oral  
5 argument context. Then I will hearing from counsel.

6 The Court would note that the complaint in this matter  
7 was filed back on May 11 of 2018 at docket No. 1.

8 Docket No. 66 is a uniform pretrial scheduling order  
9 which was issued on December 27 of 2018, which somewhat  
10 optimistically directed all discovery be completed by June 17 of  
11 2019.

12 As indicated earlier, docket No. 293 is a motion filed  
13 by defendant Vullo seeking to compel plaintiffs to provide a  
14 further response to interrogatory No. 2 in their first set of  
15 interrogatories and to compel responses to their second set of  
16 interrogatories.

17 Docket No. 307 is the plaintiff's response to  
18 defendant Vullo's motion to compel which was filed on November 9  
19 of 2020.

20 The Court would note that pursuant to Rule 26 of the  
21 Federal Rules of Civil Procedure particularly addressing initial  
22 disclosure, a party is required to disclose the name and, if  
23 known, the address and telephone number of each individual  
24 likely to have discoverable information along with the subjects  
25 of that information that the disclosing party may use to support

**NRA of America v. Cuomo et al. - 18-CV-566**

1 its claims or defenses unless used solely for impeachment.

2 Rule 26 also sets forth the scope of discovery and its  
3 limits and provides, among other things, parties may obtain  
4 discovery regarding any nonprivileged matter that is relevant to  
5 any party's claim or defense and proportional to the needs of  
6 the case considering the importance of the issues at stake in  
7 the action, the amount in controversy, the parties' relative  
8 access to relevant information, the parties' resources, the  
9 importance of the discovery in resolving the issues, and whether  
10 the burden or expenses of the proposed discovery outweigh its  
11 likely benefit. Information within the scope of discovery need  
12 not be admissible in evidence to be discoverable.

13 The scope of this action has changed since  
14 Ms. Greenberger on behalf of Ms. Vullo filed for a motion to  
15 compel. More particularly, it has been changed by Judge  
16 McAvoy's decision issued on March 15 of 2021 which dismissed the  
17 then pending selective enforcement claim against Ms. Vullo and  
18 denied the motion to dismiss with respect to her First Amendment  
19 claims. I would note that Ms. Vullo is seeking appeal to the  
20 Second Circuit with respect to the remaining First Amendment  
21 claim.

22 In his decision, Judge McAvoy addresses the First  
23 Amendment claims beginning on page 23 of the decision, which is  
24 at docket No. 322, which provides in part, "Count 1 of the  
25 second amended complaint alleges that defendants' actions

***JACQUELINE STROFFOLINO, RPR***  
***UNITED STATES DISTRICT COURT - NDNY***

**NRA of America v. Cuomo et al. - 18-CV-566**

1 including but not limited to the issuance of the April 2018  
2 guidance letters and the accompanying backroom exhortations, and  
3 the imposition of the consent orders upon Chubb and Lockton, and  
4 the issuance of the Cuomo press release established a system of  
5 informal censorship designed to suppress the NRA's speech.  
6 Plaintiff asserts that defendants took these actions with intent  
7 to obstruct, chill, deter, and retaliate against the NRA's core  
8 political speech. Count 2 alleges that these same actions by  
9 defendants were in response to and substantially caused by the  
10 NRA's political speech regarding the right to keep and bear  
11 arms. Defendants' actions were for the purpose of suppressing  
12 NRA's pro-Second Amendment viewpoint. Defendants undertook such  
13 unlawful conduct with the intent to obstruct, chill, deter, and  
14 retaliate against the NRA's core political speech."

15 The Court would note that Judge McAvoy specifically  
16 directs, addresses those claims and Ms. Vullo's motion to  
17 dismiss at page 27 at docket No. 322 where Judge McAvoy says  
18 among other things, "When doing so, a question of material fact  
19 exists as to whether Ms. Vullo explicitly threatened Lloyd's  
20 with DFS enforcement if the entity did not disassociate with the  
21 NRA. Based upon this question of material fact, and even  
22 assuming an objectively reasonable person would not have known  
23 that the guidance letters or Ms. Vullo's statements in the Cuomo  
24 press release could be construed as implied threats to regulated  
25 entities if they did not disassociate with the NRA, qualified

**NRA of America v. Cuomo et al. - 18-CV-566**

1 immunity on the First Amendment claims must be denied at this  
2 time. Further, because Ms. Vullo's alleged implied threats to  
3 Lloyd's and promises of favorable treatment if Lloyd's  
4 disassociated with the NRA could be construed as acts of bad  
5 faith in enforcing the Insurance Law in New York, a question of  
6 fact exists as to whether she is entitled to qualified immunity  
7 under New York law."

8                   Turning then to interrogatory No. 2 in plaintiff's  
9 first set of interrogatories, which can be found at docket  
10 No. 293-2, which was filed on October 5 of 2020, upon review of  
11 Judge McAvoy's decision which has trimmed the scope of this  
12 litigation, what additional information, if any, are you seeking  
13 with respect to interrogatory No. 2?

14                   MR. CELLI: Debby, you're muted.

15                   MS. GREENBERGER: I'm so sorry. Debby Greenberger for  
16 Ms. Vullo. I was saying, Your Honor, that with respect to  
17 interrogatory No. 2 from plaintiff's -- I'm sorry, from  
18 defendant's first set of interrogatories, we're seeking every  
19 piece of it, that information. As I think Your Honor clearly  
20 pointed out, Judge McAvoy's recent decision makes clear that  
21 this case turns on the so-called backroom exhortations, and our  
22 interrogatories are limited and focused on finding out what is  
23 the discoverable information about what people have relevant  
24 information about those so-called backroom exhortations. I'm  
25 happy to speak in further detail, but I just want to answer your

**NRA of America v. Cuomo et al. - 18-CV-566**

1 question.

2 THE COURT: I asked you a bad question. It's Monday  
3 morning. I apologize. What specifically are you seeking at  
4 this point that is not provided in their earlier responses?

5 MS. GREENBERGER: Sure, of course, Your Honor. So  
6 interrogatory No. 2 seeks specifically the identity of each  
7 person to whom a threat was made, and the identity of each  
8 witness who heard such so-called threat, and where and when such  
9 threat happened supposedly. The NRA has not disclosed or  
10 provided any of those things. Their response to our  
11 interrogatory was just to cite public statements, about which I  
12 think there's really very little or no dispute, but they haven't  
13 provided any of these so-called backroom statements that are the  
14 heart of Judge McAvoy's decision.

15 THE COURT: Mr. Geisler, sir, what is your response to  
16 Ms. Greenberger?

17 MR. GEISLER: Well, thank you, Your Honor. With  
18 respect to request No. 2, specifically to each person made and  
19 witnesses, in our response, which was Exhibit E to Ms. Vullo's  
20 motion papers at 293-6, in our response to interrogatory No. 1,  
21 we did identify two individuals who we believe were at the  
22 meeting.

23 MS. GREENBERGER: Your Honor, they're referring to a  
24 different interrogatory.

25 THE COURT: Don't interrupt Mr. Geisler. I'll give

***JACQUELINE STROFFOLINO, RPR***  
***UNITED STATES DISTRICT COURT - NDNY***

**NRA of America v. Cuomo et al. - 18-CV-566**

1 you a chance to be heard when he's done.

2 So Mr. Geisler, we're addressing interrogatory No. 2,  
3 but I assume you contend some of that information is provided in  
4 response to No. 1; is that correct?

5 MR. GEISLER: That is correct, but this was a  
6 supplemental. Ms. Greenberger is right. I apologize. Let me  
7 be clear. I'm referring to a supplemental response to the  
8 interrogatories that was served I think -- correct me if I'm  
9 wrong. Ms. Greenberger was referring to the initial responses.  
10 So when the statement was made that there was no responses  
11 specifically to individuals who were at a meeting, I'm just  
12 simply pointing out that we identified at least two individuals.

13 Also, to put this in the proper context, the meetings  
14 that are referenced, Ms. Vullo herself was each -- attended each  
15 of these meetings. In other words, there's no allegation here  
16 at issue regarding any meeting or any event that's at issue in  
17 which Ms. Vullo herself was not in attendance. So to the extent  
18 that anyone would have the information that Ms. Vullo is  
19 seeking, Ms. Vullo herself would by definition have that  
20 information.

21 THE COURT: Counselor, that's not acceptable to the  
22 Court. If you contend there are people who observed the conduct  
23 which was set forth in the second amended complaint with respect  
24 to the First Amendment arguments, they're entitled to know the  
25 names of those people and the ability to contact them and what

**NRA of America v. Cuomo et al. - 18-CV-566**

1       they allegedly saw. You need to recall, Counselor, Ms. Vullo  
2       says none of these things happened. So it's hard for her to be  
3       a witness to an event which she contends didn't happen.

4               If you contend the NRA is aware of people who  
5       witnessed the conduct set forth which I just read to you in the  
6       second amended complaint, which was addressed by Senior Judge  
7       McAvoy at page 27 of 43 of his decision, you're required to  
8       provide the people who you claim support your allegation that  
9       your client's First Amendment rights were violated. Are you  
10      aware of any such people, Counselor? Mr. Geisler, are you aware  
11      of any such people who support the allegation set forth in Count  
12      1 and Count 2 of your second amended complaint?

13               MR. GEISLER: Yes. As we set forth in our papers,  
14       counsel has interviewed individuals who are current or former  
15       employees of or agents of Lloyd's, who have the information that  
16       was set forth in the second amended complaint. As Your Honor  
17       knows, it's our position that those, the identity of those  
18       individuals are protected under the work product doctrine. We  
19       have identified to our knowledge those people who were in  
20       attendance at the meeting.

21               THE COURT: Mr. Geisler, I apologize. I'm just not  
22       following you. So it's your position that you're aware of  
23       individuals who are going to support the allegations set forth  
24       in Count 1 and Count 2 of the second amended complaint; is that  
25       correct?

**NRA of America v. Cuomo et al. - 18-CV-566**

1                   MR. GEISLER: Yes. There are individuals who support,  
2 whose information supports the allegations in the second amended  
3 complaint.

4                   THE COURT: And it's your position that they're not  
5 entitled to know the names of those people?

6                   MR. GEISLER: These individuals, as I said, are former  
7 or current agents or employees. They are concerned about  
8 retaliation. They've spoken directly to counsel and have given  
9 information that led to the allegations in the complaint. Yes,  
10 there are --

11                  THE COURT: So what point in time would you propose to  
12 disclose that information to counsel? Because I assume you're  
13 going to endeavor to call these people at trial if there is a  
14 trial. At what point in time would you give that information to  
15 Ms. Vullo's attorneys?

16                  MR. GEISLER: Well, we haven't made any -- we're very  
17 early. There's been almost no discovery. There have been no  
18 depositions. There's been barely any document discovery. We  
19 haven't made any determination who we're going to call at trial,  
20 much less for depositions. As discovery continues, and again  
21 we've received virtually none, as discovery continues, we will  
22 make a determination whether these or other witnesses are  
23 necessary. Obviously if it would come to a point where someone  
24 would be called for a deposition or a trial, then they would  
25 know the identity of those individuals.

**NRA of America v. Cuomo et al. - 18-CV-566**

1                   THE COURT: What about these other individuals you  
2 contend were at these meetings? If you determine not to call  
3 them, is defendant Vullo not entitled to know who those people  
4 are?

5                   MR. GEISLER: The individuals who have been identified  
6 have been identified. So Ms. Vullo can call them for a  
7 deposition. Specifically, I'm referring to Ms. Beale and  
8 Mr. Gunset. She can call them for a deposition as soon as  
9 discovery recommences.

10                  THE COURT: As indicated, Mr. Geisler, you are aware  
11 of a number of additional witnesses who are allegedly present at  
12 these meetings who have information which is supportive of your  
13 allegations in the second amended complaint. When would you  
14 propose to provide that information to them?

15                  MR. GEISLER: No. Let me be clear. The individuals  
16 at issue, I do not know. I do not know that they were at the  
17 meetings in question, the meetings that Ms. Beale and  
18 Ms. Gunset -- Mr. Gunset attended. These are witnesses --

19                  THE COURT: They have information which is supportive  
20 of your position; isn't that correct?

21                  MR. GEISLER: Yes.

22                  THE COURT: When do you intend to give them the names  
23 of these people and the scope of what they allegedly know so  
24 they can determine whether or not they want to depose them?

25                  MR. GEISLER: Again, if document discovery, when it

**NRA of America v. Cuomo et al. - 18-CV-566**

1 commences, and it hasn't even started hardly, will determine  
2 further who was at the meetings, which we don't have that  
3 information. Ms. Vullo has that information.

4 THE COURT: Mr. Geisler, you have the information  
5 regarding people you contend have knowledge which is supportive  
6 of the First Amendment claims set forth in your first and second  
7 cause of actions in your second amended complaint; is that  
8 correct?

9 MR. GEISLER: Yes.

10 THE COURT: And you have names of people who you have  
11 not disclosed to Ms. Vullo's attorneys; is that correct?

12 MR. GEISLER: Yes.

13 THE COURT: And when do you propose to disclose that  
14 to them so they can determine whether or not they want to  
15 conduct discovery with respect to those people?

16 MR. GEISLER: Well, Your Honor, I would respectfully  
17 submit that if we could have a chance perhaps to submit in  
18 camera an affidavit from counsel who actually interviewed these  
19 individuals to give Your Honor a better idea of what information  
20 specifically they have, their fear of retaliation, maybe that  
21 would be a starting point to a determination of if and when  
22 those identities should be disclosed.

23 THE COURT: Counsel, this case has been pending for  
24 almost three years. You keep saying discovery hasn't started.  
25 This case was filed on May 11 of 2018. It's going to have its

**NRA of America v. Cuomo et al. - 18-CV-566**

1       third birthday next week, and we've done virtually nothing here.  
2       You're done. You're done. I'm directing that within 30 days of  
3       today's date, you provide to Ms. Vullo as directed in Rule 26  
4       the name, address, and telephone number of each individual  
5       likely to have discoverable information, and this is clearly  
6       discoverable information, along with the subject of that  
7       information within 30 days. Do you understand that, Counsel?

8                    MR. GEISLER: Yes, Your Honor.

9                    THE COURT: Ms. Greenberger, does that address what  
10        you're seeking? Ms. Greenberger or Mr. Celli?

11                  MS. GREENBERGER: Largely, Judge Hummel, although I  
12        just would add one specific thing. We have asked who  
13        specifically was in the room, and what I'm hearing now from  
14        Mr. Geisler I think for the first time is that the only people  
15        they know were in the room or they believe or are alleging were  
16        in the room were Ms. Beale and Mr. Gunset. That is not what  
17        their discovery responses say. They use words like "including"  
18        in one of their responses, and they don't answer at all in their  
19        other response.

20                  So if their position is that they have identified two  
21        people who were in the room and there is nobody else, that would  
22        be helpful information going forward, but they need to say that  
23        under oath in their interrogatory response.

24                  THE COURT: Mr. Geisler, to save some time, are you  
25        aware of anyone who was present in the room other than the two

**NRA of America v. Cuomo et al. - 18-CV-566**

1 names that Ms. Greenberger just stated?

2 MR. GEISLER: I am personally not. I can't speak  
3 for -- I cannot speak for what information counsel may have, but  
4 we'll clarify that. We'll clarify that in these responses.

5 THE COURT: I'm going to direct that you confirm in  
6 your response the names of everyone who was present in the room  
7 when you allege these conversations took place.

8 MR. GEISLER: To our knowledge.

9 THE COURT: I can only hold you to your knowledge,  
10 Mr. Geisler. That's what the law is based on. Discovery is  
11 based on what clients and attorneys know.

12 Ms. Greenberger, the same dispute appears to me to  
13 exist with respect to your second set of interrogatories,  
14 interrogatories 1, 2, and 3. Is that correct, or do you have a  
15 different argument with respect to those?

16 MS. GREENBERGER: No. It's the same argument, Your  
17 Honor. You know, they have alleged that there were  
18 communications with executives, plural, and institutions,  
19 plural, but it sounds to me like what we're hearing today is  
20 that they have -- that there's one institution that they  
21 actually have any basis to make that allegation about. So that  
22 is something that needs to be clarified as well. If there's a  
23 single institution, namely Lloyd's, that they claim there was a  
24 single conversation, that's different than if there were  
25 multiple institutions and a series of meetings beginning in

**NRA of America v. Cuomo et al. - 18-CV-566**

1 February 2018 as they allege.

2 THE COURT: Mr. Geisler, sir, what do you want to tell  
3 me?

4 MR. GEISLER: We'll clarify further the -- you're  
5 seeking the number of the institutions and the identity of the  
6 institutions specifically?

7 MS. GREENBERGER: Correct, and the number of meetings.

8 MR. GEISLER: Again, to the best of our knowledge, we  
9 will provide that information to the extent that we can. Again,  
10 this information is again in Ms. Vullo's knowledge as well  
11 because she participated in these meetings.

12 THE COURT: Again, Mr. Geisler, I'm only directing you  
13 to provide information that your client has knowledge of.  
14 Again, Ms. Vullo, based upon my reading of these pleadings,  
15 denies that these conversations took place and these  
16 exhortations or threats were made. To the extent that your  
17 client contends they have knowledge of institutions which were  
18 involved in this, you're directed to provide them with the name  
19 of the institutions. You're directed to provide them with the  
20 names of the meetings -- number of meetings. Excuse me. To the  
21 extent you're aware of specific people who were present at the  
22 meetings, you're to provide that information. Understand that?

23 MR. GEISLER: Yes, Your Honor.

24 THE COURT: Ms. Greenberger and Mr. Celli, that would  
25 seem to address the issues raised with respect to your motion to

**NRA of America v. Cuomo et al. - 18-CV-566**

1 compel; is that correct?

2 MS. GREENBERGER: Yes, Your Honor. Thank you very  
3 much, Your Honor.

4 THE COURT: Mr. Scott, you've been strangely silent.

5 Anything you'd like to add?

6 MR. SCOTT: I would like to be a surprise on occasion,  
7 Your Honor, but nothing further to add.

8 THE COURT: I'm going to ask Ms. Stroffolino, our  
9 court reporter, to do a transcript reflecting this. I will do  
10 an order annexing the transcript and reflecting what I just  
11 directed. As I indicated earlier -- perhaps I didn't. The  
12 supplemental responses will be due within 30 days of today's  
13 date.

14 MR. GEISLER: Your Honor, may I ask one final  
15 question? Let me withdraw. Thank you, Your Honor.

16 THE COURT: You folks are all set. Everyone be safe  
17 and be well. Thank you.

18 (The matter adjourned at 11:24 a.m.)

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**NRA of America v. Cuomo et al. - 18-CV-566**

## 1 CERTIFICATION OF OFFICIAL REPORTER

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4 I, JACQUELINE STROFFOLINO, RPR, Official Court Reporter,  
5 in and for the United States District Court for the Northern  
6 District of New York, do hereby certify that pursuant to Section  
7 753, Title 28, United States Code, that the foregoing is a true  
8 and correct transcript of the stenographically reported  
9 proceedings held in the above-entitled matter and that the  
10 transcript page format is in conformance with the regulations of  
11 the Judicial Conference of the United States.

12

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Dated this 26th day of April, 2021.

14

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/s/ JACQUELINE STROFFOLINO

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JACQUELINE STROFFOLINO, RPR

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FEDERAL OFFICIAL COURT REPORTER

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